UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,834	10/15/2003	Charles S. Fox JR.	CRNC.110144	9865

46169 7590 02/19/2009

SHOOK, HARDY & BACON L.L.P.
Intellectual Property Department
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

EXAMINER	
RANGREJ, SHEETAL	
ART UNIT	PAPER NUMBER
3686	

MAIL DATE	DELIVERY MODE
02/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/684,834	FOX ET AL.	
	Examiner	Art Unit	
	SHEETAL R. RANGREJ	3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Prosecution History Summary

1. Claims 1, 3-4, 6, 17, 20, 21, and 25 are amended.

2. Claim 8 is cancelled.

3. Claims 1-7 and 9-25 are pending.

Continued Examination Under 37 CFR 1.114

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/2008 has been entered.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6-7, 9-15, and 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

1. The basis of this rejection is based on recent Federal Circuit decisions and Supreme Court precedent in particular, *Diamond v. Diehr*, 450 U.S. 175, 184 (184); *Parker v. Flook*, 437 U.S.

584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876) which state that the process must:

(1) be tied to another statutory class (such as a particular apparatus); or

(2) transform underlying subject matter (such as an article or materials) to a different state or thing.

For a claimed invention to be statutory subject matter eligible, the claimed invention must fall within a judicial exception. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited claims should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps or positively recite subject matter that is being transformed for example by identifying the material that is being changed to a different state.

2. In the present case, claims 6-7, 9-15, and 20-25 recite an abstract idea only. The claims recite steps and means for a) defining processes, b) forming links between processes, traversing processes by meeting exit requirements. These steps and means do not apply, involve, use, or advance the technological arts since they can be performed in the mind of the user or by use of a pencil and paper. These steps and means only constitute an idea of how to define, linking and traversing processes.

3. While applicant's claim encompasses "a computer-implemented method," the claim is not limited to such an embodiment. Applicant's claimed method steps, as recited in the body of claim 1, are not limited to process steps using particular structure or apparatus. To the contrary, looking only to the method steps recited in the body of claim 1, they would reasonably be interpreted to encompass a human being performing these steps. The Applicant's claim 1 preamble includes only a nominal recitation of a "computer apparatus." Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process. *See Benson*, 409 U.S. at 71-72. *In re Langemyr*.

4. The Examiner directs Applicant's attention to claim 1 as a possible way to amend the claims to put them within a judicial exception. In particular, explicitly claiming the medium or structure in the body of the claim that performs the underlying process steps would serve to better recite the technological arts within the present set of claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 and 17-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gombrich (U.S. Patent No. 4,916,441).

6. As per claim 1, Gombrich teaches a system for managing patient care, the system comprising:

-a caregiver portable information device having an identifier recognition mechanism **(Gombrich: claim 1)** and having an interactive user interface configured to display a patient task list and receive selection of a task from the patient task list **(Gombrich: col. 6, 52-65; col. 11, 5-38; col. 12, 12-30)**;

-a patient machine-readable identifier **(Gombrich: col. 6, 23-30)**; and

-a central information system including patient records comprising treatment history and orders by a caregiver for treatment of an identified patient **(Gombrich: col. 10, 35-53)**;

–wherein the patient task list is displayed on the interactive user interface on the caregiver portable information device such that a caregiver may select the task from the task list **(Gombrich: col. 6, 52-65; col. 11, 5-38; col. 12, 12-30)**;

-wherein the task list is determined from the orders for the identified patient **(Gombrich: col. 12, 1-11)** and

-wherein the task list is automatically displayed on the caregiver portable information device upon recognition of the patient machine-readable identifier by the caregiver portable information device **(Gombrich: col. 12, 1-11)**.

7. As per claim 2, the system of claim 1 is as described. Gombrich further teaches further comprising a caregiver machine-readable identifier attached to a caregiver badge **(Gombrich: col. 10, 35-45)**.

8. As per claim 3, the system of claim 1 is as described. Gombrich further teaches wherein the portable information device includes wireless communication tools for verifying patient data with the central information system **(Gombrich: col. 9, 15-50)**.

9. As per claim 4, the system of claim 1 is as described. Gombrich further teaches wherein the central information system further includes caregiver data, and wherein the portable information device includes wireless communication tools for verifying the caregiver data with the central information system **(Gombrich: col. 6, 23-38)**.

10. As per claim 5, the system of claim 1 is as described. Gombrich further teaches wherein the patient task list comprises instructions for administration of at least one medication **(Gombrich: col. 10, 54-67)**.

11. As per claim 17, Gombrich teaches a task-based system for managing patient care, the system comprising:

-a central information system having a database including patient data records comprising a patient task list determined from orders for an identified patient **(Gombrich: col. 11, 40-58)**, wherein the patient task list maybe updated in real-time based on one or more changes to the orders for the identified patient by a caregiver **(Gombrich: col. 9, 58 to col. 19, 15)**;

-a patient identifier for identifying a patient **(Gombrich: col. 6, 23-30)**;

-a caregiver portable information device having tools for reading the patient identifier **(White: abstract)**; and

- an interactive user interface displayed on the caregiver portable information device and configured such that a caregiver may select the task from the task list and record the selected task

on the caregiver portable information device **(Gombrich: col. 6, 52-65; col. 11, 5-38; col. 12, 12-30)**,

-wherein the interactive user interface displays the patient task list automatically upon recognition of the patient identifier by the caregiver portable information device **(Gombrich: col. 12, 1-11)**.

12. Claims 18-19 recite substantially similar limitations as those already addressed in claims 2-3, respectively, and, as such, are rejected for similar reasons as given above.

13. Claim 20 recite substantially similar limitations as those already addressed in claims 1 and 17, and, as such, are rejected for similar reasons as given above.

14. As per claim 21, the method of claim 20 is as described. Gomrbich further teaches wherein the caregiver portable information device includes a scanner, and wherein receiving the caregiver identifier and the patient identifier includes receiving the caregiver identifier and the patient identifier utilizing the scanner **(Gombrich: col. 5, 34-50; col. 6, 23-67)**.

15. As per claim 22, the method of claim 20 is as described. Gombrich further teaches further comprising receiving the caregiver identifier and the patient identifier from the caregiver portable information device at the central information system **(Gombrich: col. 6, 23-67)**.

16. As per claim 23, the method claim 22 is as described. Gombrich further teaches further comprising verifying patient identity through information available in the central information system **(Gombrich: col. 6, 23-67)**.

17. As per claim 24, the method of claim 20 is as described. Gombrich further teaches further comprising dynamically generating the task list at the central information system and sending the task list to the portable information device **(Gombrich: col. 10, 35-68)**.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. Claims 6-7, 8-16, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gombrich (U.S. Patent No. 4,916,441) in view of White et al. (U.S. Patent No. 6,519,569).

20. As per claim 6, Gombrich teaches a computer-implemented method for managing patient care comprising:

-recognizing a patient machine-readable identifier **(Gombrich: col. 12, 1-11)**;

-accessing a task list for the patient recognized by the patient machine-readable identifier from a central information system, the task list being determined from the orders entered by a caregiver for treatment of the identified patient **(Gombrich: col. 12, 1-11)**,

- wherein the task list is accessed via an interactive user interface configured to display the patient task list and receive a task selection from a caregiver **(Gombrich: col. 6, 52-65; col. 11, 5-38; col. 12, 1-30)**.

Gombrich, however, fails to expressly teach a computer-implemented method for managing patient care comprising: recognizing a medication machine-readable identifier; determining if the medication identified by the medication machine-readable identifier matches with the medication from the task list; and displaying a warning on a caregiver portable information device if the medication identified by the medication machine-readable identifier does not match with a medication.

Nevertheless, these features are old and well known in the art as evidenced by White. In particular White teaches a computer-implemented method for managing patient care comprising:
-recognizing a medication machine-readable identifier **(White: col. 8, 25-45)**;
-determining if the medication identified by the medication machine-readable identifier matches with the medication from the task list **(White: col. 8, 25-45)**; and
-displaying a warning on a caregiver portable information device if the medication identified by the medication machine-readable identifier does not match with a medication **(White: col. 8, 46 to col. 9, 14)**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Gombrich and White with the motivation of providing accurate infusion of medications in a large institutional facility such as hospitals or large clinics **(White: col. 1, 39-57)**.

21. As per claim 7, the method of claim 6 is as described. Gombrich further teaches further comprising displaying the task list on the caregiver portable device, wherein the task list includes

at least one medication administration task for administering medication **(Gombrich: col. 10, 35-67)**.

22. As per claim 9, the method of claim 7 is as described. Gombrich further teaches further comprising recording administration of the medication **(Gombrich: col. 12, 12-19)**.

23. As per claim 10, the method of claim 6 is as described. Gombrich further teaches further comprising recognizing a caregiver identifier **(Gombrich: col. 6, 23-35)**.

24. As per claim 11, the method of claim 6 is as described. Gombrich further teaches further comprising implementing the caregiver portable information device with an embedded scanner for scanning the patient machine readable identifier **(Gombrich: col. 5, 34-50)**.

25. As per claim 12, the method of claim 11 is as described. Gombrich further teaches further comprising transmitting the patient identifier from the caregiver portable information device to a central information system **(Gombrich: col. 6, 23-67)**.

26. As per claim 13, the method of claim 12 is as described. Gombrich further teaches further comprising verifying an identity of the patient through information available in the central information system **(Gombrich: col. 6, 23-67)**.

27. As per claim 14, the method of claim 13 is as described. Gombrich further teaches further comprising receiving current patient related tasks from the central information system at the caregiver portable information device **(Gombrich: col. 10, 35-67)**.

28. As per claim 15, the method of claim 13 is as described. Gombrich further teaches further comprising using the caregiver portable information device to obtain a caregiver identifier, transmitting the caregiver identifier from caregiver the portable information device to

the central information system, and receiving verification of the caregiver identity from the central information system at the caregiver portable information device **(Gombrich: col. 6, 23-67)**.

29. As per claim 16, the method of claim 15 is as described. Gombrich further teaches wherein obtaining the caregiver identifier comprises scanning a machine-readable identifier using an embedded reader in the caregiver portable information device **(Gombrich: col. 6, 23-67)**.

30. As per claim 25, the method of claim 20 is as described. Gombrich explicitly fails to teach further comprising receiving a medication identifier from an identification device including a bar code identifying a particular medication.

Nevertheless, these features are old and well known in the art as evidenced by White. In particular White teaches further comprising receiving a medication identifier from an identification device including a bar code identifying a particular medication **(White: col. 8, 12-24)**.

The motivation to combine the teachings is the same as claim 6.

Response to Arguments

31. Applicant's arguments with respect to claims 1-7 and 8-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEETAL R. RANGREJ whose telephone number is (571) 270-1368. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

/S. R. R./
Examiner, Art Unit 3686
February 4, 2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686